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4 JOHN FRATUS,
5 Plaintiff,
6 v.
7
8 WEBB, et al.,
9 Defendants.
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12 Case No. 24-cv-03467 EJD (PR)
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15 **ORDER OF SERVICE; DIRECTING
16 DEFENDANTS TO FILE
17 DISPOSITIVE MOTION OR
18 NOTICE REGARDING SUCH
19 MOTION; INSTRUCTIONS TO
20 CLERK**

21 Plaintiff, a state prisoner, filed the instant pro se civil rights action pursuant to 42
22 U.S.C. § 1983 against prison staff at Salinas Valley State Prison (“SVSP”) where he was
23 previously housed. Dkt. No. 1. Plaintiff has paid the filing fee. Dkt. No. 14.

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28 **DISCUSSION**

A. **Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See id. § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was

1 violated, and (2) that the alleged violation was committed by a person acting under the
2 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

3 **B. Plaintiff's Claims**

4 Plaintiff is suing the following Defendants: (1) Correctional Officer Ruiz;
5 Correctional Officer Webb; Correctional Officer G. Gil; Correctional Office Molina; Sgt.
6 Gonzalez; Nurse Campos; Nurse John Doe; Doctor John Doe #1; and Dr. John Doe #2.
7 Dkt. No. 1 at 5-6.

8 Plaintiff claims that he was removed from SVSP's "Psychiatric Inpatient Program"
9 on October 6, 2021, after he filed a grievance against a psychiatrist for messing with his
10 medication and lying about him. Id. at 6-7. He left the hearing upset, threatening to sue:
11 "if I hurt myself I can sue you, I'm gonna sue you, what if I go back to my cell and hurt
12 myself you're gonna get in trouble." Id. at 7-8. He was returned to his cell. Id. at 8.
13 About 45 minutes later, 6-7 officers, "including Officers Gil, Ruiz, and Webb," came to
14 Plaintiff's cell and ordered him to "cuff up" as he was being placed on suicide watch. Id.
15 Plaintiff replied, "No. I am not suicidal. I am not cuffing up. Go away." Id. Eventually
16 Plaintiff complied by turning around with his hands behind his back, at which point the
17 cell door was opened and "officers entered Plaintiff's cell swinging [and] throwing
18 punches." Id. Plaintiff alleges that he was "100% compliant, non-assaultive and non-
19 resistive" while officers repeatedly punished him in the head. Id. His injuries included a
20 bloody lip, black eye, limps, bumps, and bruises on his face and head. Id.

21 Plaintiff was then informed that Nurse Campos would administer an injection of
22 Haldol.¹ Id. at 9. Plaintiff pleaded not to receive the injection, asserting that he was
23 entitled to the option of taking it orally before an injection was forced on him. Id. Nurse
24 Campos responded that the doctor (John Doe) had ordered the shot, and then proceeded to
25 inject Plaintiff with Haldol while officers held him down. Id. at 10.

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27 ¹ Haldol is the brand name for Haloperidol, which is an antipsychotic drug used to treat
schizophrenia and other psychotic disorders.

28 <https://www.webmd.com/drugs/2/drug-5419/haldol-oral/details>

1 The next day, October 7, 2021, Plaintiff was still on suicide watch. Id. When he
2 pleaded to the doctor (John Doe #1) to be removed from suicide watch, the doctor refused.
3 Id. at 11. The doctor also ignored Plaintiff's request for clothes as he was "freezing." Id.
4 In protest, Plaintiff covered his window with toilet paper. Id. Officers came to his cell,
5 ordering Plaintiff to take down the toilet paper and uncover his window; Plaintiff
6 eventually complied. Id. Officers entered his cell, including Defendants Ruiz, Molina,
7 and Gonzalez, and punched Plaintiff in the face and head; Officer Mendes was present and
8 did not intervene. Id. at 11-12. Plaintiff had lumps, bumps, bruises on his face and head,
9 and a bloody lip. Id. at 12. Nurse John Doe then entered his cell and injected Plaintiff
10 with Haldol per "doctor (John Doe #2)'s orders," despite Plaintiff's protests. Id.

11 Based on the foregoing allegations, Plaintiff asserts violations of his rights under
12 the Eighth Amendment based on Defendants' use of excessive force in violation of the
13 Eighth Amendment and the involuntary administration of medication in violation of the
14 Fourteenth Amendment and Eighth Amendment. Plaintiff's allegations are sufficient to
15 state such claims. See Hudson v. McMillian, 503 U.S. 1, 6 (1992) (prisoner has Eighth
16 Amendment right to be free from excessive force); Washington v. Harper, 494 U.S. 210,
17 221-22 (1990) (recognizing inmate's liberty interest in freedom from unwanted
18 antipsychotic drugs).

19 With regard to Doe defendants, although the use of "John Doe" to identify a
20 defendant is not favored in the Ninth Circuit, see Gillespie v. Civiletti, 629 F.2d 637, 642
21 (9th Cir. 1980); Wiltsie v. Cal. Dep't of Corrections, 406 F.2d 515, 518 (9th Cir. 1968),
22 situations may arise where the identity of alleged defendants cannot be known prior to the
23 filing of a complaint. In such circumstances, the plaintiff should be given an opportunity
24 through discovery to identify the unknown defendants, unless it is clear that discovery
25 would not uncover their identities or that the complaint should be dismissed on other
26 grounds. See Gillespie, 629 F.2d at 642; Velasquez v. Senko, 643 F. Supp. 1172, 1180
27 (N.D. Cal. 1986). Here, it appears that Plaintiff may be able to identify the appropriate
28 Defendants by name through discovery. Therefore, Plaintiff shall be given an opportunity

1 to identify John Doe Defendants through discovery and file a motion to amend to add their
2 proper names to this action in the time provided below.

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4 CONCLUSION

5 For the reasons set forth above, the Court orders as follows:

6 1. The following defendant at SVSP shall be served:
7 a. **Correctional Officer Ruiz**
8 b. **Correctional Officer Webb**
9 c. **Correctional Officer G. Gil**
10 d. **Correctional Officer Molina**
11 e. **Sgt. Gonzalez**
12 f. **Nurse Campos**

13 Service on the listed defendant(s) shall proceed under the California Department of
14 Corrections and Rehabilitation's (CDCR) e-service program for civil rights cases from
15 prisoners in CDCR custody. In accordance with the program, the clerk is directed to serve
16 on CDCR via email the following documents: the operative complaint and any attachments
17 thereto, (Dkt. No. 1), this order of service, a CDCR Report of E-Service Waiver form and
18 a summons. The clerk also shall serve a copy of this order on the plaintiff.

19 No later than 40 days after service of this order via email on CDCR, CDCR shall
20 provide the court a completed CDCR Report of E-Service Waiver advising the court which
21 defendant(s) listed in this order will be waiving service of process without the need for
22 service by the United States Marshal Service (USMS) and which defendant(s) decline to
23 waive service or could not be reached. CDCR also shall provide a copy of the CDCR
24 Report of E-Service Waiver to the California Attorney General's Office which, within 21
25 days, shall file with the court a waiver of service of process for the defendant(s) who are
26 waiving service.

27 Upon receipt of the CDCR Report of E-Service Waiver, the clerk shall prepare for
28 each defendant who has not waived service according to the CDCR Report of E-Service

1 Waiver a USM-205 Form. The clerk shall provide to the USMS the completed USM-205
2 forms and copies of this order, the summons and the operative complaint for service upon
3 each defendant who has not waived service. The clerk also shall provide to the USMS a
4 copy of the CDCR Report of E-Service Waiver.

5 2. No later than **ninety-one (91) days** from the date this order is filed,
6 Defendants shall file a motion for summary judgment or other dispositive motion with
7 respect to the claims in the complaint found to be cognizable above.

8 a. Any motion for summary judgment shall be supported by adequate
9 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of
10 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor
11 qualified immunity found, if material facts are in dispute. If any Defendant is of the
12 opinion that this case cannot be resolved by summary judgment, he shall so inform the
13 Court prior to the date the summary judgment motion is due.

14 b. **In the event Defendants file a motion for summary judgment, the
15 Ninth Circuit has held that Plaintiff must be concurrently provided the appropriate
16 warnings under Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See
17 Woods v. Carey, 684 F.3d 934, 940 (9th Cir. 2012).**

18 3. Plaintiff's opposition to the dispositive motion shall be filed with the Court
19 and served on Defendants no later than **twenty-eight (28) days** from the date Defendants'
20 motion is filed.

21 Plaintiff is also advised to read Rule 56 of the Federal Rules of Civil Procedure and
22 Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (holding party opposing summary judgment
23 must come forward with evidence showing triable issues of material fact on every essential
24 element of his claim). Plaintiff is cautioned that failure to file an opposition to
25 Defendants' motion for summary judgment may be deemed to be a consent by Plaintiff to
26 the granting of the motion, and granting of judgment against Plaintiff without a trial. See
27 Ghazali v. Moran, 46 F.3d 52, 53–54 (9th Cir. 1995) (per curiam); Brydges v. Lewis, 18
28 F.3d 651, 653 (9th Cir. 1994).

4. Defendants shall file a reply brief no later than **fourteen (14) days** after Plaintiff's opposition is filed.

5. The motion shall be deemed submitted as of the date the reply brief is due. No hearing will be held on the motion unless the Court so orders at a later date.

6. All communications by the Plaintiff with the Court must be served on Defendants, or Defendants' counsel once counsel has been designated, by mailing a true copy of the document to Defendants or Defendants' counsel.

7. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required before the parties may conduct discovery.

8. While conducting discovery, Plaintiff is directed to attempt to ascertain the name of John Doe Defendants, and file a motion to substitute the complaint with these Defendants' proper names **no later than fifty-six (56) days** from the date this order is filed. Failure to do so will result in the dismissal of the claims against these John Doe Defendants for failure to state a claim for relief.

9. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

10. Extensions of time must be filed no later than the deadline sought to be extended and must be accompanied by a showing of good cause.

IT IS SO ORDERED.

Dated: December 30, 2024


EDWARD J. DAVILA
United States District Judge